

REPUBLIC OF SOUTH AFRICA

ELECTRONIC DEEDS REGISTRATION SYSTEMS BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 41308 of 7 December 2017)
(The English text is the official text of the Bill)*

(MINISTER OF RURAL DEVELOPMENT AND LAND REFORM)

[B 35—2017]

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BILL

To provide for electronic deeds registration, having regard to legislation regulating electronic communication and transactions; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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Definitions

1. In this Act, unless the context indicates otherwise—
- “**authorised user**” means a user of the electronic deeds registration system contemplated in section 4, and “**user**” has a corresponding meaning; 15
- “**Chief Registrar**” means the Chief Registrar of Deeds appointed in terms of section 2 of the Deeds Registries Act;
- “**conveyancer**” means a conveyancer as defined in section 102 of the Deeds Registries Act;
- “**deed or document**”, for the purpose of any act of registration, execution or filing in terms of the Deeds Registries Act and Sectional Titles Act or any other law, means a deed or document in the form of a data message as defined in the Electronic Communications and Transactions Act, generated, submitted, received or stored by electronic means in the electronic deeds registration system, and includes scanned images of a deed or document; 20 25
- “**Deeds Registries Act**” means the Deeds Registries Act, 1937 (Act No. 47 of 1937);
- “**deeds registry**” means a deeds registry as defined in section 102 of the Deeds Registries Act;
- “**Electronic Communications and Transactions Act**” means the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002); 30
- “**electronic deeds registration system**” means the electronic deeds registration system contemplated in section 2;
- “**executed**” means executed in a deeds registry;
- “**Minister**” means the Minister of Rural Development and Land Reform; 35
- “**notary public**” means a notary public as defined in section 102 of the Deeds Registries Act;

“owner” means an owner as defined in section 102 of the Deeds Registries Act;
“prescribe” means prescribe by regulations;
“registered” means registered in a deeds registry and includes registration;
“Registrar” means the Registrar of Deeds appointed in terms of section 2 of the Deeds Registries Act; 5
“regulation” means a regulation made under section 5;
“Sectional Titles Act” means the Sectional Titles Act, 1986 (Act No. 95 of 1986);
 and
“signature”, in respect of any act performed in terms of the Deeds Registries Act and Sectional Titles Act by a conveyancer, notary public, statutory officer or Registrar in attesting his or her signature to a deed or document or a scanned image of a deed or document in respect of the registration thereof, means an advanced electronic signature as defined in section 1 of the Electronic Communications and Transactions Act, and **“electronic signature”** has a corresponding meaning. 10

Development, establishment and maintenance of Electronic Deeds Registration System 15

2. (1) The Chief Registrar of Deeds must, subject to the Electronic Communications and Transactions Act, develop, establish and maintain the electronic deeds registration system using information and communications technologies for the preparation, lodgment, registration, execution and storing of deeds and documents. 20

(2) In achieving the objectives contemplated in subsection (1), the Chief Registrar of Deeds may, after consultation with the Regulations Board referred to in section 9 of the Deeds Registries Act, issue directives for—

- (a) the functional requirements of the electronic deeds registration system;
- (b) the technical specifications for the electronic deeds registration system; 25
- (c) the specifications for the interface between the electronic deeds registration system and any party interfacing in the system which will be authorised to access the electronic deeds registration system;
- (d) the standards governing the information security of the electronic deeds registration system; 30
- (e) the operation of the electronic deeds registration system;
- (f) the processing of deeds and documents using the electronic deeds registration system;
- (g) the retention and subsequent production of deeds and documents, or any other electronic records, which may be pertinent to the registration of rights in the deeds registry or that may be required for the administrative or legal proceedings that must be complied with by users interacting with the electronic deeds registration system; and 35
- (h) any other matter specifically provided for in this Act.

Validity of deeds and documents 40

3. Subject to section 14 of the Electronic Communications and Transactions Act, a deed or document generated, registered and executed electronically and any other registered or executed deed or document scanned or otherwise incorporated into the electronic deeds registration system by electronic means is for all purposes deemed to be the only original and valid record. 45

Authorised users

4. Any user of the electronic deeds registration system authorised by the regulations must be registered in the manner and under the conditions as may be directed by the Chief Registrar of Deeds.

Regulations 50

5. (1) The Minister may, on the recommendation of the Regulations Board referred to in section 9 of the Deeds Registries Act, make regulations relating to—

- (a) the procedures for the electronic lodgement of deeds or documents;
- (b) the procedures for electronic record storing by deeds registries;

- (c) the manner of identification of the person who prepares, executes, lodges, registers or stores any deed or document required or permitted to be prepared, executed, lodged, registered or stored in any deeds registry;
 - (d) the manner in which electronic payment of fees may be introduced;
 - (e) the procedure and manner for accessing the electronic deeds registration system for information purposes only; 5
 - (f) the authorisation of any user of the electronic deeds registration system, as contemplated in section 4; and
 - (g) any matter that may be necessary to give effect to the objectives of this Act.
- (2) The Minister must, before making regulations in terms of this Act— 10
- (a) publish the proposed regulations in the *Gazette* for public comments;
 - (b) allow a period of at least 30 days for written comments on the proposed regulations; and
 - (c) consider any such written comments received.
- (3) The regulations must be published in the *Gazette*, and shall come into operation on a date specified in the relevant notice, which date must not be less than 30 days from the date of publication thereof. 15

Transitional provisions

6. (1) This Act does not affect the validity of any registrations effected prior to the coming into operation thereof. 20

(2) The Registrar must continue with the registration, execution and filing of deeds and documents as prescribed by the Deeds Registries Act and the Sectional Titles Act, until the electronic deeds registration system or related provisions or regulations are in place, where after the registration, execution and filing procedures in terms of the Deeds Registries Act and the Sectional Titles Act will be discontinued in respect of all deeds, documents or deeds registries. 25

(3) A conveyancer, notary public and statutory officer must continue with the preparation and lodgement of deeds and documents as prescribed by the Deeds Registries Act and the Sectional Titles Act, until the electronic deeds registration system or related provisions or regulations are in place, where after the preparation and lodgement procedures in terms of the Deeds Registries Act and the Sectional Titles Act will be discontinued in respect of all deeds, documents or deeds registries: Provided that any deed or document electronically executed or registered, shall be deemed to have been executed or registered in the presence of the Registrar by the owner or by a conveyancer authorised by power of attorney to act on behalf of the owner. 30 35

(4) Notwithstanding subsections (2) and (3), the Chief Registrar of Deeds may issue a directive for the continuation of the preparation, lodgement, registration, execution and filing of deeds and documents manually, as prescribed by the Deeds Registries Act and the Sectional Titles Act, whereupon a conveyancer, statutory officer and notary public may either use the said manual system or the electronic deeds registration system until such period as may be determined by the Chief Registrar. 40

Short title and commencement

7. (1) This Act is called the Electronic Deeds Registration Systems Act, 2017, and comes into operation on a date to be fixed by the President by proclamation in the *Gazette*. 45

(2) The President may set different dates for the coming into operation of the different provisions of this Act or the different acts of registration under the Deeds Registries Act and Sectional Titles Act.

(3) The President may set different dates for the coming into operation of any or certain provisions of this Act for the different deeds registries. 50

MEMORANDUM ON THE OBJECTS OF ELECTRONIC DEEDS REGISTRATION SYSTEMS BILL, 2017

1. BACKGROUND

- 1.1 Security of title in South Africa is not explicitly guaranteed by statute, but flows from the unique deeds registration system which is based on specific responsibilities assigned by the Deeds Registries Act, 1937 (Act No. 47 of 1937) (“the Act”), to both the conveyancer (who prepares and lodges deeds and documents) and the Registrar of Deeds whose registration function is calculated to afford security of title.
- 1.2 A computer system known as the Deeds Registration System is in place for the purpose of maintaining the electronic land register. Apart from this electronic process, the preparation and lodgement by the conveyancer, as well as the processing of deeds and documents by the Registrar of Deeds, take place manually. With the advent of the Internet, e-commerce and global computerisation, there has been an increased need for electronic service delivery and a number of new challenges are now facing the Deeds Registries, for example, the inability of the present registration infrastructure and resources, to accommodate the increase in volume in respect of an anticipated 20 million land parcels of the government’s land reform measures; the need to link with the electronic Cadastral Information System, in order to improve efficiency and accuracy of South Africa’s land information management; the demand for decentralisation of services, in order to effect delivery at point of need; the necessity for consolidating and rationalising diversified registration procedures created through legislation by previous political dispensation; and the need to provide registration capability for other forms of land tenure that the government may introduce in future.
- 1.3 To meet the above-mentioned challenges, the Office of the Chief Registrar of Deeds embarked on a project for the implementation of e-commerce principles, in order to facilitate an Electronic Deeds Registration System (“e-DRS”). The e-DRS will provide for, amongst other things, the registration of large volumes of deeds effectively; improved turn-around times for providing registered deeds and documents to clients; provide country wide access to deeds registration services; enhanced accuracy of examination and registration; availability of information to the public; and security features including confidentiality, non-repudiation, integrity and availability.
- 1.4 The Electronic Deeds Registration Systems Bill, 2017 (“the Bill”) has been drafted to provide legislation that is required for the development of an e-DRS.

2. CURRENT POSITION

- 2.1 The Deeds Registries Act, 1937 (Act No. 47 of 1937), and the Sectional Titles Act, 1986 (Act No. 95 of 1986), provides for registration processes to take place manually. However, a need exists for a fully e-DRS to provide, amongst other things, for a fast process for the registration of ownership of land.
- 2.2 The e-DRS aims to provide for the effective registration of large volumes of deeds and to enhance the accuracy of the processes relating to the examination and registration of deeds.

3. OBJECTS OF BILL

The main objectives of the Bill are to—

- (a) facilitate the development of an e-DRS, in order to effect the registration of large volumes of deeds as necessitated by Government’s land reform initiatives; and

- (b) expedite the registration of deeds by decreasing the time required for the deeds registration process.

4. SUMMARY OF BILL

The Bill is divided into seven clauses, as follows:

- (a) **Clause 1** provides for definitions.
- (b) **Clause 2** provides for the development, establishment and maintenance of the e-DRS by the Chief Registrar of Deeds. The Chief Registrar of Deeds is empowered to issue practice and procedure directives for, amongst others, the functional requirements of the e-DRS; technical specifications for the e-DRS; and the operation of the e-DRS.
- (c) **Clause 3** provides for the validity of deeds and documents. A deed or document generated, registered and executed electronically and any other registered or executed deed or document scanned or otherwise incorporated into the e-DRS by electronic means is for all purposes deemed to be the only original and valid record.
- (d) **Clause 4** requires any user of the electronic deeds registration authorised by the regulations to be registered in the manner and under the conditions as may be directed by the Chief Registrar of Deeds.
- (e) **Clause 5** empowers the Minister to make regulations, on recommendation by the Regulation Boards established in terms of the Deeds Registries Act, relating to, amongst others, the procedures for the electronic lodgement of deeds or documents; procedures for electronic record storing by deeds registries; and the manner of identification of the person who prepares, executes, lodges, registers or stores any deed or document required or permitted to be prepared, executed, lodged, registered or stored in any deeds registry.
- (f) **Clause 6** provides for transitional provisions relating to the continuation, by a Registrar of Deeds, of the registration, execution and filing of deeds and documents in a deeds registry until the e-DRS and related provisions or regulations are in place.
- (g) Clause 7 provides for the short title and commencement of the Act.

5. DEPARTMENTS / BODIES CONSULTED

5.1 The following bodies were consulted:

- The Deeds Registries Regulations Board;
- Registrars of Deeds; and
- The Law Society of South Africa.

5.2 The Bill was published for public comments in the Government *Gazette* and comments were received from the Law Society of South Africa, the Banking Association of South Africa and various conveyancers.

6. FINANCIAL IMPLICATIONS FOR STATE

The project relating to the implementation of the e-DRS has already commenced and expenditure relating thereto is financed by the Deeds Registries Trading Account. The main source of funding this Account is the fees that are charged by the various deeds registries for the registration of deeds and the sale of deeds registration information, as provided for in regulation 84 of the Deeds Registries Act.

7. CONSTITUTIONAL IMPLICATIONS

None.

8. COMMUNICATION IMPLICATIONS

To be undertaken by the Department of Rural Development and Land Reform.

9. PARLIAMENTARY PROCEDURE

9.1. The Department and the State Law Advisers are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution, as the Bill contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

9.2. In *Tongoane and Others v Minister of Agriculture and Land Affairs and others 2010 (6) SA 214 (CC)* (“*Tongoane judgment*”), the Constitutional Court confirmed and endorsed the test for tagging that was formulated by that Court in *Ex Parte President of the Republic of South Africa: In re Constitutionality of the Liquor Bill [1999] ZACC 15;2000 (1) SA 732 (CC); 2000 (1) BCLR 1 (CC)*, where Ngcobo CJ held as follows at paragraph 56:

“the heading of section 76, namely, “Ordinary Bills affecting provinces” provides “a strong textual indication that section 76(3) must be understood as requiring that any Bill whose provisions in substantial measure fall within a functional area listed in Schedule 4, be dealt with under section 76.” (Our underlining).

9.3. As indicated in the *Tongoane judgment* “any Bill whose provisions in substantial measure” fall within a function listed in Schedule 4 to the Constitution must be classified as a section 76 Bill. The question that needs to be asked therefore is whether the provisions of the Bill, in substantial measure, fall within a functional area listed in Schedule 4 to the Constitution, or whether the Bill provides for the legislation envisaged in section 76(3)(a) to (f) of the Constitution.

9.4. In order to determine this, focus must be on all the provisions of the Bill in order to establish the extent to which they substantially affect the functional areas listed in Schedule 4 and not on whether any of its provisions are incidental to its substance. It is thus necessary to examine all the provisions of the Bill as a whole to determine the extent to which they substantially affect any of the matters listed in Schedule 4.

9.5. What must be stressed is that the *Tongoane judgment* went on to state that, “. . . the procedure envisaged in section 75 of the Constitution remains relevant to all Bills that do not, in substantial measure, affect the provinces”. Therefore, a Bill which does not deal with a functional area listed in Schedule 4 or Schedule 5 to the Constitution must be considered in accordance with the procedure set out in section 75 of the Constitution.

9.6. The State Law Advisers have carefully considered the Bill and measured it against the matters listed in schedule 4 or 5 to the Constitution. As indicated above, the Bill deals with e-DRS. In this regard, the Bill provides for the development, establishment and maintenance of the e-DRS, and requires the Chief Registrar of Deeds to develop, establish and maintain the e-DRS for the preparation, lodgment, registration, execution and storing of deeds and documents. It is clear that the matters covered in the Bill are not listed in either schedule 4 or 5 to the Constitution.

- 9.7 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.